Decision **Alternate Proposed Decision of Commissioner Geoffrey Brown**
(Mailed 8/25/2005)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338 E) for Approval of Economic Development Rates.	Application 04-04-008 (Filed April 5, 2004)
Application of Pacific Gas and Electric Company to Modify the Experimental Economic Development Rate (Schedule ED). (U 39 E)	Application 04-06-018 (Filed June 14, 2004)

(See ATTACHMENT B for Appearance List)

ALTERNATE OPINION OF COMMISSIONER BROWN CONCERNING ECONOMIC DEVELOPMENT RATE TARIFFS

TABLE OF CONTENTS

TITLE **PAGE**

OPINION ACCEPTING ECONOMIC DEVELOPMENT RATE TARIFFS

I. Summary

The economic development tariffs proposed in these two applications were designed to attract business to California, to expand business in California, or to retain business in California. On August 30, 2004, these two applications were consolidated in the Scoping Memo and Ruling of Assigned Commissioner. Hearings were held on October 18, 19, 20 and 21. This decision accepts the proposed economic development rates (EDR) with modifications.

A. Southern California Edison (SCE)

In Application (A.) 04-04-008, SCE requests authority to offer three types of EDR agreements: (1) the EDR-Attraction; (2) the EDR – Expansion; and (3) the EDR - Retention. Each EDR agreement would provide participating customers a discount from the customer's otherwise applicable tariff (OAT) beginning at 25%, and declining by 5% each year over a five-year term. SCE proposes to make these options available to customers whose demands exceed 200 kilowatts (kW), provided the customer could demonstrate to SCE's satisfaction that "but-for" the incentive provided by the EDR agreement, the customer would not retain its load in SCE's service territory, or would not otherwise locate or expand its load in California.

SCE requests authority to make these options available to eligible customers until December 31, 2006, and to assess whether their availability should be extended beyond that date in Phase 2 of SCE's 2006 General Rate Case (GRC). The underlying premise of its application is the need to promote economic development in its service territory by offering an incentive to customers who would otherwise not retain or locate their load in California. SCE contends that this would benefit its ratepayers in a number of ways, including the reduction of rates by spreading SCE's and the Department of Water Resources (DWR) fixed costs over a larger base of retained sales.

SCE believes that its proposal ensures that participating customers will provide benefits to other ratepayers by producing a positive contribution to margin (CTM)[1] over the term of the EDR agreements. Under its proposal, the amount of the discount for bundled-service customers would be calculated based on their total bill on their OAT.[2] For ratemaking purposes, SCE would first apply revenue received from EDR customers to make a full contribution to nonbypassable charges and the DWR power charge, and then apply the remaining revenue to distribution and generation charges.

For direct-access (DA) customers, SCE initially proposed to calculate the discount using the same percentage reduction it applies to the bills of bundled-service customers; however, since DA customers do not purchase generation service from SCE or DWR power, the amount of their discount would be smaller. SCE would once again first apply revenue received from DA customers to nonbypassable charges, excluding the DWR bond charge, with

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[1] Contribution to margin (CTM) is the difference between the average rate paid by a customer and the marginal cost of serving that customer. (D.96-08-025, p. 5.)

[2] The total bill for bundled-service customers includes all delivery charges (Transmission, Distribution, DWR Bond Charge, Public Purpose Program, and Nuclear decommissioning Charge) as well as SCE's generation charge and the charge for DWR power. For DA customers, the bill includes all delivery charges and the DA cost responsibility surcharge (CRS), but no SCE generation or DWR power charges. (SCE/Jazayeri; Ex. 1:16.)

the remaining revenue applied to SCE's delivery charges and to the CRS paid by DA customers.[3]

In order to provide an incentive for customers to remain on the EDR agreement, thereby ensuring that ratepayers receive the expected benefits over the term of the EDR agreement, SCE proposes a liquidated damage provision. The liquidated damages would recover the discount provided to EDR customers whose agreements were terminated prematurely, unless termination was due to shut down of the facility. SCE's proposal also includes measures intended to prevent the use of these agreements by free-riders, *i.e.*, those customers that would have retained or located the load in California in any event without receiving the discount provided by the EDR agreement.

B. Pacific Gas and Electric Company (PG&E)

In A.04-06-008, PG&E proposes enhancements to its existing Schedule ED rate:

- Expand the availability of the rate option to PG&E's entire electric service territory;
- Increase the percentage and length of time over which non-generation tariff rates would be adjusted;
- Expand the eligibility to include business retention in addition to business attraction and expansion, and include the State in making the determination as to which businesses qualify for the rate;
- Remove the caps on the number of possible customer participants and amount of load; and

[3] The amount of revenue apportioned to the CRS would be allocated in accordance with D.03-07-030, *i.e.*, to the DWR Bond Charge, Historical Procurement Charge, Competition Transition Charge, and DWR Power Charge.

- Remove the disincentive to PG&E's application of the rate in the form of shareholder financial participation.

(Exhibit 7, PG&E Direct Testimony, p. 1-1.) PG&E's original proposal has been modified over the course of the proceeding to incorporate the following elements:

- A liquidated damages clause applicable to customers who sign an enhanced ED contract based on fraud or misrepresentation. (Exhibit 9, PG&E Rebuttal Testimony, p. 1-15.) For such instances, PG&E is willing to support liquidated damages that would require the customer to pay twice the difference between the otherwise applicable tariff (OAT) and the amounts paid by the customer under the enhanced Schedule ED rate. (Exhibit 29, Joint Proposal, p. 1.)
- Affirmation that bundled service customers on the Schedule ED rate should be able to opt for procurement service from another provider (*e.g.*, direct access or community choice aggregation), assuming the customer is otherwise eligible for such service. (Exhibit 9, PG&E Rebuttal Testimony, p. 1-7.)
- Clarification that PG&E would not use the enhanced Schedule ED in combination with PG&E's Distribution Bypass Deferral Rate (*i.e.*, Schedule E-31). (Exhibit 9, PG&E Rebuttal Testimony, p. 1-6.)

C. Joint Utility Proposal

At the request of the presiding Administrative Law Judge (ALJ), a Joint Proposal was developed by Edison and PG&E, with each utility compromising on various aspects of its independent proposals. The ALJ had commented that if he were to recommend that the Commission authorize SCE and PG&E to offer the EDRs, that whatever proposal he recommended would apply equally to both utilities, *i.e.*, the terms of the agreements would be consistent, that he would include a liquidated damage provision in his recommendation, and that the agreement could only be offered to a customer whose relocation choice was outside California. Pursuant to the ALJ's request, SCE and PG&E submitted a common proposal that eliminates all prior differences between SCE and PG&E in terms of their respective EDR proposals. The Joint Proposal (Exhibit 29) provides the following:

Issue	Joint Proposal
Eligibility Test	"But-for" test, as proposed by SCE and described in Exhibit 2, p. 3.
Sunset Date	December 31, 2009.
Program Cap	100 MW as proposed by SCE, clarifying that the cap would apply at any point in time for active contracts, based on contract demand.
Liquidated Damages	For misrepresentation or fraud, liquidated damages equal to 200% of the cumulative differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT. For other cases of early termination (excepting business closure or reduction of load without relocation), liquidated damages equal to the cumulative differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT less 15%, plus interest on that difference at the 90-day commercial paper rate. (The OAT less 15% figure was chosen because it reflects the average incentive expected over the life of the contract.)
Form of Affidavit	Separate from contract as proposed by PG&E, except that it would be modified to reflect the "but for" test and would include the following statement: "On an annual basis, the cost of electricity for [Company Name] at this facility represents approximately [Number] % of operating costs."
3rd Party Review	Office of California Business Investment Services (CalBIS) to perform preliminary review, with the utility performing final review and determination. Approval by CalBIS is "necessary but not sufficient" for eligibility.
Eligible Customers	All customers above 200 kW, except state and local government and residential customers. Offer of rate

Issue	Joint Proposal
	at utility discretion.
Calculation of Incentives for Bundled Customers	Incentive calculated on total OAT and, for ratemaking purposes, reflected in the utility-retained generation and distribution revenues only.
Calculation of Incentives for Direct Access (DA) Customers	Equivalent incentive for DA customers, based on using bundled-service customer's generation cost as a proxy.
Floor Pricing and Marginal Costs	Limit the discount to ensure revenue does not fall below floor price, which consists of transmission charges, public purpose program (PPP) charges, nuclear decommissioning (ND) charges, DWR Bond charges, Competition Transition Charge (CTC), marginal costs for distribution, and, if a bundled-service customer, marginal costs for generation. Floor price to be based on customer-specific marginal costs, up to the OAT. Unit marginal costs to be established at beginning of customer contract.
Shareholder Contributions	None

SCE and PG&E recommend that the Commission adopt the provisions of the Joint Proposal as a comprehensive package that would apply to both SCE and PG&E, without shareholder financial participation.

D. Position of Other Parties

The Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM/WPTF) state that the Joint Proposal "offers a compromise that is worthy of serious consideration by the Commission," that AReM/WPTF support the Joint Proposal, and that the Commission should adopt it "as a reasonable means of resolving the issues extant in this proceeding."[4]

Modesto Irrigation District (Modesto ID) supports the Joint Proposal provided that the Commission imposes shareholder participation in the

[4] AReM/WPTF OB, pp. 3, 4, 6.

discount, precludes the discounting of nonbypassable charges, and prohibits the combination of the EDR agreements with other similar discounts.[5] Merced Irrigation District (Merced ID) along with Modesto ID do not oppose economic development rates, but support a proposed modification to the language and form of the customer affidavit, a call for 25% shareholder participation in funding the discount, and a proposal for a third-party reviewer of eligibility other than CalBIS.[6]

The Office of Ratepayer Advocates (ORA) supports a slightly-modified version of SCE's position prior to the Joint Proposal with 25% shareholder participation in the funding of the discount.[7] Aglet opposes EDR, but states that if the Commission approves the applications, it should modify the Joint Proposal to impose further restrictions.[8]

II. The Need for Economic Development Rates

SCE and PG&E assert that California's business climate is one of the most unfriendly in the nation, with the cost of doing business the fourth highest in the nation. At the same time, California's regulatory environment is one of the most burdensome in the nation. Utility costs in California exceed the national average, and exceed the average utility costs in the western states which directly compete with California for businesses and jobs. All these negative factors have contributed to the migration of jobs and economic activity from California to

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5 Modesto OB, p. 1.

6 Comments of Merced Irrigation District and Modesto Irrigation District on Alternate Opinion of Commissioner Kennedy Accepting Economic Development Rate Tariffs

7 ORA OB, p. 1.

8 Aglet OB, pp. iv, 2.

other states. Utility costs are playing a more important role in attracting business to other states. Some states' economic development agencies specifically target California businesses.

While California's economy, on a stand-alone basis, is currently rated as the fifth or sixth largest in the world, the California Business Roundtable (CBRT) reports that "California's regulatory environment is the most costly, complex, and uncertain in the nation."[9] Worker productivity, venture capital funding, higher education facilities and California's concentration of science and technology give California distinct advantages over many locations. However, California is often overlooked when it comes to a company's decision to relocate or to expand. A major factor is the cost of doing business. Other western states are becoming the preferred locations for businesses to expand and establish new facilities due to their lower costs and fewer regulatory burdens.

Various studies maintain that the cost of electricity is one of the main contributors to the cost of doing business in California. However, it is not the only high-cost issue facing California companies. High workers' compensation costs, employee costs, taxes, property costs, etc., add to the burden of doing business in California. It has been suggested that electric rates alone cause one sixth of an estimated 30% cost premium for doing business in California.[10] Economic development corporations outside California highlight California's higher electricity costs as one of the major reasons to move into their states. In the NCBER study, the "cost of occupancy and utilities "in Los Angeles County is

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[9] CBRT, Bain & Company California Competitiveness Project, 2/25/04 Exec. Summary, p. 5. (Exh. 6.)

[10] CBRT, Bain & Company California Competitiveness project, 2/5/04 Exec Summary, p. 3. (Exh. 6.)

identified as the third-highest factor cited in relocation decisions.[11] Utility costs, as a factor contributing to business relocation decisions, are only exceeded by the overall costs of doing business and insufficient room for expansion.[12]

The Milken Institute notes that other states are aggressively attempting to lure manufacturers away from California by highlighting their lower business costs, particularly electricity and tax rates.[13] By comparison, California's electricity rates are exceptionally high. At the time the Milken Institute report was released, California had electricity costs that were double the national average and were the highest rates in the contiguous United States.[14] Rates have since been reduced from their high point during the energy crisis, but for rates in effect as of July 1, 2003, SCE had the fourth highest commercial electric rate and eighth highest industrial rate of 166 investor-owned electric utilities included in the analysis.

Section 740.4(h) of the Pub. Util. Code requires the Commission to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs." SCE and PG&E believe that ED rates will benefit utility ratepayers in two ways.

First, the utilities state that successful economic development projects benefit ratepayers directly by increasing the revenues available to contribute to the utilities' fixed costs of doing business, thus lowering rates to other customers.

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[11] L.A. Region NCBER Final Report, December 2003, p. 38. (Exh. 1.)

[12] *Ibid.*

[13] Milken Institute, Manufacturing Matters, August 2002, p. 6. (Exh. 7.)

[14] Milken Institute, Manufacturing Matters, August 2002, p. 39. (Exh. 7.)

The ability to offer a rate that is lower than the tariff rate, but higher than marginal costs, helps to maintain or attract CTM for the benefit of ratepayers to the extent that the customers would not otherwise remain or locate within the utilities' service territory absent the incentive. If the customer chooses a location outside of the utilities' service territory, its CTM is zero, thus depriving other ratepayers of the positive CTM that would have been made available from the rate offering.

Second, the utilities contend that in addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities and improved overall local and economic vitality. Local communities benefit from the economic multiplier effect resulting from local spending by newly employed, or continuously employed, workers where the businesses locate. One of the indirect results from the strengthened economic base is the fuller use of the utilities' transmission and distribution facilities which further reduce rates.

ORA, in evaluating the need for ED rates, questions whether a different type of program might be more effective in meeting the goals of retaining businesses in California or whether different classes of customers, such as small businesses, are more in need of an ED rate. ORA questions whether such a program will foster the overall goal of improving the California economy and increasing jobs in California. It contends that while parties cite a variety of formal studies and informal opinions to support their own position, either for or against ED rates, in the end the need for such programs appears to be subjective. ORA has concluded, however, that while all the questions about the need for ED rates cannot be answered in the affirmative with absolute confidence, such a program could bring benefits to ratepayers, but only if such a program contains safeguards to prevent free-riders by being carefully targeted at businesses which are at risk of leaving the State or not locating in California.

Merced ID argues that it is not clear that the utilities have met their burden of proof that any of their ED rate proposals should be adopted. However, it says that if we adopt an ED rate program we should not tilt the competitive playing field in favor of the utilities nor shift costs to other ratepayers. Merced ID's traditional district boundaries are entirely encompassed within PG&E's service territory. As a result, Merced ID and PG&E compete head-to-head for customers. Merced ID asserts that PG&E's proposed ED rate could result in tilting the competitive playing field in PG&E's favor, in unqualified customers using the ED rate, and in cost-shifting under the ED rate at a relatively high level given the depth of the discounts offered. Merced ID contends that factors other than energy drive business location decisions.

III. Discussion

Section 740.4(h) of the Pub. Util. Code requires the Commission to allow recovery through rates of expenses and rate discounts supporting economic development programs to the extent that ratepayers "derive a benefit from those programs." As the utilities have demonstrated, the implementation of successful economic development projects would benefit ratepayers directly by increasing the revenues available to contribute to the utilities' fixed costs of doing business, thus lowering rates to other customers. The ability to offer a rate that is lower than the tariff rate, but higher than marginal costs, helps to maintain or attract CTM for the benefit of ratepayers to the extent that the customers would not otherwise remain or locate within the utilities' service territory absent the incentive. If the customer chooses a location outside of the utilities' service territory, its CTM is zero, thus depriving other ratepayers of the positive CTM that would have been made available from the rate offering.[15]

In addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities and improved overall local and economic vitality. Local communities benefit from the economic multiplier effect resulting from local spending by newly employed, or continuously employed, workers where the businesses locate. One of the indirect results from the strengthened economic base is the fuller use of the utilities' transmission and distribution facilities which further reduce rates. [16]

As indicated above, the derived benefits from a successfully implemented EDR program appear to sufficiently satisfy the ratepayer benefit test. Despite these apparent ratepayer benefits, Aglet contends that one of the utilities' primary measurements of ratepayer benefits—the Ratepayer Impact Measure (RIM) test—could be adversely impacted by even a relatively low level of free-ridership. The utilities argue, however, that the "free-rider" rate would have to be as high as 75% for the enhanced EDR program not to benefit ratepayers.[17] As the utilities have demonstrated, past experience with the existing Schedule ED, in conjunction with the additional eligibility limitations proposed for the enhanced EDR program, indicates that the actual level of free-ridership would be

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[15] Exhibit 7, PG&E Direct Testimony, Chapter 6; PG&E Rebuttal Testimony, Chapter 3.

[16] *Ibid.*

[17] Reply Brief of Pacific Gas and Electric Company, December 15, 2004, p. 19.

substantially below the 75% break even level.[18] Aglet's concerns of relatively low levels of free-ridership adversely impacting ratepayer benefits have merit under certain circumstances, such as when the discount lowers the contribution-to-margin to nearly zero and a significant percentage of customers in a small rate class are free riders. Past experience indicates that although the EDR system will inherently attract free-riders, these aberrations will be insufficient to offset the ratepayer benefits that the incentives will entail if the EDR program has sufficient safeguards to limit free-ridership.

To ensure that free-ridership does not approach this 75% threshold, however, the utilities have proposed a number of preventative measures. First, they propose requiring potential applicants to file an affidavit stating that:

> 1. But for receipt of the discounted development rate the Applicant's load would not have been located, added, or retained within California;
> 2. The load to which the Agreement applies represents kilowatt-hours (kWh) that either (i) do not already exist in the State of California, or (ii) the Applicant considered relocating to a location outside of the State of California;
> 3. Applicant has discussed with the Company the cost-effective conservation and load management measures the Applicant may take to reduce their electric bills and

[18] *Ibid* p. 19.

> the load they place on the Utility System. (See Attachment A).

The proposed affidavit serves to address two key concerns expressed by several of the parties. First, it requires the applicant, under penalty of law, to assert that were it not for the Agreement, it would have either failed to expand, relocate or add its load in the State of California. Next, it addresses the legitimate concern of expanding demand on an already overburdened utility system. Furthermore, by requiring the applicant to discuss the cost-effective conservation and load management measures it could take to reduce its impact on the utility system, the utilities are making a concerted effort to comply with the Commission's goals of conservation and demand side management. Although a simple "discussion" between the applicant and the utility may not be enough to ensure that any of the available conservation measures are actually pursued, it does demonstrate a desire on behalf of the utilities to keep potential EDR participants apprised of the Commission's conservation goals and methods for meeting these objectives.

We believe that the utilities should make every effort to persuade potential EDR customers to meet the Commission's identified conservation and efficiency objectives, as an alternative to moving to the EDR tariff. If a customer can save enough money through DSM and energy efficiency programs, it may well not need an EDR tariff in order to remain in California. In this case, the customer is satisfied, the utility retains a customer within the current framework of tariffs and already-allocated energy efficiency funds, and the remaining ratepayers need not take on an additional burden through absorption of partial loss of contribution to margin. Therefore, in an effort to guarantee that "discussions" with EDR applicants do not become mere formalities, we will require the utilities to provide potential EDR customers with a specific menu of options and opportunities tailored to the customer's unique circumstances, in order to reduce costs through existing DSM and energy efficiency programs. Only if the customer cannot sufficiently reduce costs through these programs should the EDR tariff be offered.

In an effort to ensure that applicants are not tempted to falsify their affidavits and thereby engage in free-ridership, the utilities have advocated for the imposition of liquidated damages in cases of misrepresentation or fraud. These liquidated damages will be equal to 200% of the cumulative differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT.

For cases of early termination (excepting business closure or reduction of load without relocation), liquidated damages equal to the cumulative differences between (i) the bills calculated under the ED rate to the date of termination and (ii) bills calculated under the OAT less 15%, plus interest on that difference at the 90-day commercial paper rate.

The proposed liquidated damages penalties are severe. In most cases, the types of businesses applying for EDR exemption will be those operating on thin margins or facing difficult cost constraints. The prospect of incurring damages equal to 200% of the cumulative differences between their normal bills and their bills under the EDR, a sum that could equal hundreds of thousands of dollars, will undoubtedly provide a moment of pause for any applicant considering engaging in either fraud or misrepresentation. The same can be said of the proposed penalties for early termination. Although these penalties are not as severe as those for fraud or misrepresentation, they will almost certainly act as a deterrent to any applicant contemplating abusing the EDR system for short-term gains.

While ratepayers benefit from EDR programs due to contribution-to-margin provided by a customer who would otherwise leave the state or not locate here, the concepts of ratepayer and shareholder benefit are not mutually exclusive. While ratepayers can benefit from the EDR program, that does not mean shareholders do not also benefit. Indeed, the undisputed evidence proves that they do. To believe there is no shareholder benefit is to believe that the utility does not care whether it earns its authorized rate of return. PG&E witness Mr. Kataoka admitted that EDR customers provide revenue useful to PG&E in garnering that return, both during and after their participation in the ED rate program.[19] Clearly, revenue useful in recovering its authorized rate of return is a shareholder benefit.

The Commission has required shareholder participation in EDR-type programs in the past. In 1995 we approved a settlement[20] allowing business attraction and retention rates with 35-50% shareholder contribution, noting that these rates provide significant financial benefits to shareholders in maintaining market share and retaining large industrial customers. We again approved 50%

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19 2 Tr. 266:20-22, 266:27-267:17 (PG&E/Kataoka)

20 See, e.g., D.95-10-033 (62 CPUC2d 24)

shareholder participation in 1996[21] and 25% shareholder participation in 1997[22] and 2000[23].

The utilities seek to end the long history of shareholder participation in the discounts offered in programs such as these by claiming there is no more competitive market and therefore shareholders receive no benefit by retaining or attracting customers[24]. The record compels a contrary conclusion. The utilities still face competition from publicly owned utilities. PG&E witness Kataoka agreed that Merced ID and Modesto ID are current competitors of PG&E[25]. Although Merced ID does not have and exclusive service area, instead competing head-to-head with PG&E for customers within Merced ID's district boundaries, public power providers with exclusive service areas also compete with PG&E to attract or retain a customer who is considering all its electricity supply options. While the competition envisioned during electrical restructuring may not have fully emerged, that does not mean competition does not now exist. Indeed, PG&E has competed with publicly owned utilities for decades.

Most conclusive as to the existence of competition is the fact that the very reason for these applications is the recognition (and concern) that business could go outside California rather than take service from a California utility. Whatever

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21 See D.96-08-025 (67 CPUC2d 297)

22 See D.97-09-047 (75 CPUC2d 349)

23 See Resolution E-3654 (3/2/2000)

24 PG&E Opening Brief, pp. 22-23; Edison Opening Brief, pp.26-27.

25 2 Tr. 262:3-12 (PG&E/Kataoka).

the utilities might say about benefiting California, it is the presence of out-of-state competition that animates these proposals.

We will require utility shareholders to fund 25% of the discount provided to ED customers. This is the amount proposed by several parties and is the low end of previous requirements which were part of successful EDR programs. This requirement also recognizes the benefit that a shareholder contribution will have in reducing free-ridership, and is appropriate due to the demonstrable and concurrent benefit of these programs to shareholders as well as ratepayers.

We have noted above that the EDR tariff which lower rates to a level above marginal cost can still provide benefits to other ratepayers through retaining some contribution to margin, if the customer was truly going to leave California but for this tariff option. However, the joint utility proposal would "ensure revenue does not fall below marginal cost." If revenues are at marginal cost, there is no contribution to margin, and no direct ratepayer benefit. We will require that revenues remain above marginal cost.

As a final measure for limiting free-ridership, the joint utility proposal calls for CalBIS[26] to perform a preliminary review of applicants, but leaves it to the utility to perform the final review and determination. CalBIS approval will be necessary but not sufficient for eligibility. Merced ID opposes this portion of the joint utility proposal. It argues that CalBIS is not truly an independent arbiter; its job is to provide reasons for a business to stay or locate in California. It also states that the utilities have failed to develop with CalBIS the procedure to

[26] CalBIS is the lead State government office responsible for helping domestic and foreign corporations make direct investments in California. CalBIS works to expand, attract and retain business in California.

be used for verification. Further, Merced ID argues, the utilities will not be independent decision-makers.

In this instance, as an entity whose traditional district boundaries are entirely encompassed within PG&E's service territory, and thereby competes directly with the utility for customers, it is evident why Merced ID might attempt to discredit the third-party review process. Despite Merced ID's concerns, it is clear that CalBIS has the expertise and staff to identify and screen legitimate economic development candidates, and its position as the state's preeminent evaluator of economic development issues gives it unique and early access to would-be EDR applicants. Additionally, because coordination with the utilities is already within the scope of its work, CalBIS would not require payment for its services. These factors illustrate how the Joint Proposal's third party review could act as both a cost-effective and vigilant deterrent to free-ridership.

In evaluating the role of EDR in a business expansion setting, it is instructive to consider the experience of one potential recipient of PG&E's proposed ED rate. On August 13, 2004, in this proceeding, PG&E filed a motion to provide interim rate relief to a customer, Amy's Kitchen, considering expansion and relocation outside of California. Amy's Kitchen has its corporate headquarters in Santa Rosa, as well as all of its production facilities. It employs 700 people and makes 120 products that generate annual revenues of approximately $100 million. Amy's Kitchen moved into its current 107,000 square foot facility in 1995. There is no room left in which to expand. Now the company needs approximately 80,000 more square feet of production space to keep up with projected demand for its products. Amy's Kitchen, at the time of the motion, was considering different siting alternatives: (i) expand new operations out-of-state while maintaining existing operations in Santa Rosa;

(ii) move existing operations out-of-state and expand operations at that consolidated out-of-state location; and (iii) keep existing operations in Santa Rosa and expand operations there as well. The cost of electricity in the out-of-state proposals has been as low as 4 cents/kwh.

Amy's Kitchen uses approximately 8,400 MWh annually and receives electric service under PG&E's E-19S rate schedule. In 2003, Amy's Kitchen paid approximately $1.2 million in electricity charges. If PG&E's 2003 GRC Phase II rate design proposal (A.04-06-024) is adopted, with an approximate 10% rate reduction for the schedule serving Amy's Kitchen, PG&E estimated that Amy's Kitchen would pay about $927,000 per year for electricity. Factoring in a 25% EDR reduction would reduce Amy's Kitchen's first year electric bill by approximately $232,000, to $695,000.

On November 30, 2004, PG&E filed its request to withdraw its motion for an interim decision for Amy's Kitchen, stating that Amy's Kitchen had decided to locate its expansion project in Oregon, keeping its existing facilities in California. PG&E's request to withdraw its motion was granted on December 15, 2004.

Amy's Kitchen's decision to expand its business out of state, rather than at its headquarters in Santa Rosa, indicates the need for the Commission to develop a uniform structure for the application of EDR. In PG&E's August 13, 2004 Motion for an Interim Decision to apply the enhanced Schedule EDR to Amy's Kitchen, the utility indicated that the company needed to make a decision on its expansion project by November 2004. When the Commission had not made a decision on the motion by November, Amy's Kitchen executives were forced to decide on its expansion without the opportunity to consider reduced electricity rates.

Although it is not clear whether the failure to attain a timely Commission decision on the application of EDR was *the* decisive factor in Amy's Kitchen's decision to expand out of state, it is evident that company executives were forced to make a crucial evaluation without factoring EDR savings into their calculation. The fact that the Commission's current policy of evaluating EDR applications on a case-by-case basis may have been responsible for a prominent California business locating a major expansion out of state is reprehensible, and illustrative of the shortcomings of the current regime. By giving utilities the discretion to extend EDR to qualified candidates, the Commission will be taking an important step toward ensuring that energy rates no longer act as a hindrance to companies looking to do business in California.

Finally, the Commission feels compelled to address the issues of reporting regulations and compliance standards in regard to the utilities' proposed EDR programs. While we feel it important to give the utilities the latitude to offer admission to the EDR program as they see fit, we also recognize the significance of maintaining the Commission's oversight role in this matter. For this reason, starting in 2006 and stretching until the program's sunset date in 2009, we will ask the utilities to provide the Commission with an annual compliance report detailing all EDR applicants, the contents of the CalBIS review for these applicants, the conservation and demand side management options discussed with these applicants, the applicants' decisions to accept or reject these measures, and the utilities final selection of EDR candidates. In the end, we believe this compliance filing will help ensure that the EDR program is functioning in a fashion that is both attracting, expanding and retaining business in California, and preventing the type of free-ridership that may undermine these goals.

Additionally, in an effort to reach the goal of promoting economic development on a statewide basis, we will also encourage San Diego Gas and Electric (SDG&E) and Southern California Gas Company (SoCalGas) to file applications that are consistent with the EDR programs approved for PG&E and SCE. We believe that by encouraging these two utilities to participate in the EDR process we will ensure that qualified applicants in these service areas do not miss out on the benefits proffered to those in the PG&E and SCE service areas.

IV. Comments on Proposed Decision

The proposed alternate decision of the Commissioner in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(d) and Rule 77.1 of the Rules of Practice and Procedure.

V. Assignment of Proposed Decision

Susan P. Kennedy is the Assigned Commissioner and Robert Barnett is the assigned ALJ in these proceedings.

Findings of Fact

1. The cost of electricity is one of the contributors to the cost of doing business in California. Together with compensation costs, employee costs, taxes, property costs, etc., it adds to the burden of doing business in California. By some estimates electric rates cause about one sixth of what some experts believe is the overall 30% cost premium for doing business in California.

2. The implementation of successful economic development projects would benefit ratepayers directly by increasing the revenues available to contribute to the utilities' fixed costs of doing business, thus lowering rates to other customers, as long as the revenues remain above marginal costs and the incentive rates are provided to companies that would in fact relocate away from California or not expand in or relocate to California.

3. In addition to direct benefits to other ratepayers, economic attraction and retention activities also provide indirect benefits to ratepayers in the form of increased employment opportunities and improved overall local and economic vitality.

4. For the enhanced ED program not to benefit ratepayers instances of free-ridership would have to be as high as 75% in some circumstances, but a much much lower incidence of free-ridership could eliminate ratepayer benefits in situations with low contribution-to-margin and few customers in a rate class.

5. The utilities' past experience with the existing Schedule ED, in conjunction with the additional eligibility limitations proposed for the enhanced EDR, indicates that the actual level of free-ridership would be substantially below 75%.

6. The utilities' have proposed measures in a Joint Utility Proposal, including a mandatory affidavit, the imposition of liquidated damages for fraud, misrepresentation and early termination, and a third-party review by CalBIS, that will help curb the frequency of potential free-riders.

7. The Commission has a long history of requiring utility shareholders to contribute 25-50% of the costs of economic development and analogous programs in order to assist in curbing free ridership and recognize that shareholders as well as ratepayers benefit from economic development programs.

8. The Commission has authorized a number of energy efficiency and demand-side management programs which could benefit customers who may seek ED incentives. These programs may provide benefits which can decrease or eliminate the need for ED incentives.

9. Amy's Kitchen, a company that could expect to receive a GRC electric rate decrease plus a further EDR decrease of 25%, opted to locate its expansion

facilities in Oregon because the Commission failed to issue a timely decision on the matter

10. The experience of Amy's Kitchen demonstrates that the current EDR regime must be overhauled to allow the utilities the discretion to offer these rates to qualified applicants and, therefore, accomplish the goals of retaining business in the state, attracting business to the state, and encouraging California businesses to engage in in-state expansion.

Conclusions of Law

1. Rate reductions to attract or retain business are in accord with the legislative precept to "encourage economic development." (Pub. Util. Code § 740.4.)

2. The rate reductions and procedures requested by the applicants in the Joint Utility Proposal have been justified, subject to the modifications herein. (Pub. Util. Code § 454(a).)

3. We should require utility shareholders to contribute 25% of the costs of the discounts approved in this decision.

O R D E R

1. The Joint Utility Proposal for economic development rates in Applications (A.)04-04-008 and 04-06-018 is approved, with modifications as set forth herein.

2. Utility shareholders shall contribute 25% of the costs of the discounts approved in this decision. Notwithstanding any other provision of the Joint Utility Proposal, discounts shall result in revenues above the marginal costs of the customer.

3. Beginning in 2006, and on an annual basis thereafter until the program's 2009 sunset, PG&E and SCE are ordered to submit to the Commission a

compliance filing all EDR applicants, the contents of the CalBIS review for these applicants, the specific menu of cost-effective conservation and demand side management options presented to these applicants, the applicants' decisions to accept or reject these measures, and the utilities final selection of EDR candidates.

4. Application 04-04-008 and A.04-06-018 are closed.

This order is effective today.

Dated _______________________, at San Francisco, California.

Attachment A

AFFIDAVIT FOR ECONOMIC DEVELOPMENT INCENTIVE RATE

By signing this affidavit, an Applicant who locates, adds, or retains load in the service territory of [utility name] hereby certifies and declares under penalty of perjury under the laws of the State of California that the statements in the following paragraphs are true and correct.

1. But for receipt of the discounted economic development rate the Applicant's load would not have been located, added, or retained within California.

2. The load to which the Agreement applies represents kilowatt-hours (kWh) that either (i) do not already exist in the State of California, or (ii) the Applicant considered relocating to a location outside of the State of California.

3. Applicant has discussed with the Company the cost-effective conservation and load management measures the Applicant may take to reduce their electric bills and the load they place on the Utility System.

(End of Attachment A)

ATTACHMENT B

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Last updated on 16-FEB-2005 by: LIL
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(END OF ATTACHMENT B)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served Alternate Proposed Decision of Commissioner Brown Concerning Economic Development Rate Tariffs.

Dated August 25, 2005, at San Francisco, California.

/s/ LYNN M. GESMUNDO
Lynn M. Gesmundo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

* *

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If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY **1-866-836-7825 or (415) 703-5282 at least** three working days in advance of the event.